

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RICHARD RAUCH,

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Plaintiff,

v.

Case No. 3:09-cv-757-D

GEO CORPORATION, et al.,

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Defendants.

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is ‘Defendants’ Babbili, Porras, and Swbhash [*hereinafter* Individual Defendants] Motion to Dismiss Pursuant to Rules 12(b)(1), 12(b)(4), and 12(b)(5), [sic] of the Federal Rules of Civil Procedure.” The motion was referred to this Court by the District Court. Plaintiff has filed no response to this motion.

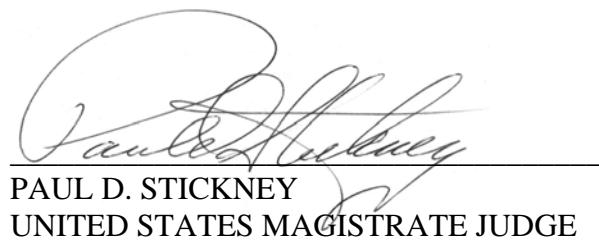
The Court finds that Plaintiff had 120 days from the District Court’s order of May 19, 2009, (until September 16, 2009) to serve the Individual Defendants. The Court finds that the first Individual Defendants were served on November 23, 2009. The Court further finds that process lacked a copy of the summons and was therefore insufficient. Once service has been contested, the plaintiff bears the burden of establishing its validity. *See Carmini v. Royal Caribbean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992). Plaintiff has not provided cause for the delay in service of process or the insufficiency of the process. Therefore, the Court finds that service of process was both insufficient and untimely.

Furthermore, Plaintiff’s prayer for relief seeks only monetary damages. Therefore, to the extent that Plaintiff is suing the Individual Defendants in their official capacities, the Court finds that

the suit is barred by the Eleventh Amendment. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

For the above reasons, the Court recommends that the Individual Defendant's Motion to Dismiss be granted and the case be dismissed without prejudice as to the Individual Defendants in their individual capacities, and with prejudice as to the Individual Defendants in their official capacities.

SIGNED, March 15, 2010.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE